

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

**IN THE MATTER OF:**

**ANDERSON EXCAVATING  
COMPANY, INC.;**  
Permit No. 78-SDP-04-89P

**ADMINISTRATIVE ORDER**

**NO. 2013-SW- 03**

**TO: Virgil Anderson  
1920 Dorcas Street  
Omaha, NE 68108**

**I. SUMMARY**

This administrative consent order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Anderson Excavating Company, Inc. (Anderson Excavating) to resolve compliance issues at the Anderson Excavating C & D Landfill (Anderson Excavating Landfill). Pursuant to this Order, Anderson Excavating shall achieve full compliance by April 1, 2013 and shall pay a penalty in the amount of \$10,000.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Holly Vandemark, Env. Spec. Sr.  
Field Office #4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Ph: 712-243-1934

**Relating to this Order to:**

Jon C. Tack, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8889

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

**III. STATEMENT OF FACTS**

1. Anderson Excavating owns and operates a construction and demolition landfill located in Pottawattamie County, Iowa pursuant to sanitary disposal project permit no. 78-SDP-04-89P. The permit was last renewed on March 14, 2008 and expired on March 14, 2011. An application for permit renewal was received on December 10, 2010. The legal description of the site is Part of Lot 5, Auditors Subdivision, NE ¼, SW ¼ and parts of Lots 1 and 2 Prosperity Acres, NW ¼, all located in Section 20, T 75 N, R 43 W, Pottawattamie County, Iowa.
2. On October 28, 2005, the DNR issued a notice of violation to Anderson Excavating for illegally disposing of petroleum contaminated soil at the Anderson Excavating Landfill.
3. On December 5, 2006, the DNR conducted a routine inspection at the Anderson Excavating Landfill. On January 16, 2007, the DNR issued a letter to Anderson Excavating, along with the inspection report, documenting violations at the landfill including inadequate waste cover application, violation of the two-foot maximum waste lift depth, inadequate compaction, and failure to have a required storm water permit.
4. On April 30, 2007, Anderson Excavating submitted its semi-annual inspection report which documented waste cover violations at the Anderson Excavating Landfill.
5. On May 15, 2007, Anderson Excavating obtained the required storm water permit coverage.
6. On July 31, 2007, the DNR sent a comment letter to Anderson Excavating in regard to the pending renewal of the company's sanitary disposal project permit. This letter notified Anderson Excavating that the approved plans for the facility included a leachate lagoon that had not been constructed. Anderson Excavating was directed to either construct the leachate lagoon or verify that the existing storage tank provided adequate minimum storage capacity for the landfill leachate.
7. On March 14, 2008, the DNR issued Anderson Excavating a renewed sanitary disposal project permit. Include in the permit was Special Provision 6a, which requires that Anderson Excavating provide onsite leachate treatment and obtain a NPDES discharge permit or discharge to a publicly owned treatment works. A deadline of September 1, 2008 to comply with this provision was established by the permit. The permit further requires the submission of the annual financial assurance report form by April 1<sup>st</sup> of each year.
8. On March 27, 2008, Anderson Excavating requested an extension of the deadline for the submission of the 2008 financial assurance report form.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

9. On April 24, 2008, the DNR granted an extension to Anderson Excavating for the submission of the annual financial assurance report form. The new deadline was established as May 31, 2008.

10. On May 29, 2008, Anderson Excavating requested another extension of the deadline for the submission of the 2008 financial assurance report form. The requested new deadline was July 1, 2008. This deadline was neither approved nor satisfied.

11. On August 15, 2008, the DNR issued a notice of violation to Anderson Excavating for failure to submit required financial assurance documentation for 2008.

12. On August 29, 2008, the DNR received Anderson Excavating's 2008 financial assurance documentation. On this date, Anderson Excavating also submitted a revised leachate management plan indicating that leachate from the Anderson Excavating Landfill would be pumped and hauled to the Council Bluffs Water Pollution Control Facility.

13. On September 15 and 18, 2008, the DNR inspected the Anderson Excavating Landfill. Deficiencies were noted, including failure to comply with erosion control, the establishment of vegetative cover, and well maintenance requirements. Anderson Excavating was notified of these deficiencies by letter dated September 29, 2008.

14. On September 26, 2008, the DNR approved an amendment to Sanitary Disposal Project Permit No. 78-SDP-04-89P. The amendment incorporated the leachate treatment agreement between Anderson Excavating and the City of Council Bluffs into the permit.

15. On April 17, 2009, the DNR issued a notice of violation to Anderson Excavating for failure to submit financial assurance documentation for 2009.

16. On May 12, 2009, Anderson Excavating submitted the required 2009 financial assurance documentation.

17. On June 26, 2009, Anderson Excavating submitted revised 2009 financial assurance documentation.

18. On December 18, 2009, Anderson Excavating notified the DNR that it had been violating the 1-foot maximum leachate head requirements in 114.26(11)"a"(1) since July 3, 2008.

19. On March 29, 2010, Anderson Excavating submitted a request for an extension of time to submit required financial assurance documentation for 2010.

20. On March 30, 2010, the DNR granted additional time to Anderson Excavating to file 2010 financial assurance documentation. The new deadline was established as May 1, 2010.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

21. On March 30, 2010, the DNR inspected the Anderson Excavating Landfill. It was determined at that time that Anderson Excavating was illegally recirculating leachate, rather than hauling the leachate to the wastewater treatment plant as authorized by the permit. The leachate tank was overflowing. The leachate overflow constitutes a hazardous condition. Additional violations were documented in regard to record keeping, intermittent cover, and well maintenance. A notice of violation was issued to Anderson Excavating on June 4, 2010.

22. On May 20, 2010, Anderson Excavating submitted a request for an extension of time to submit required financial assurance documentation for 2010.

23. On May 24, 2010, the DNR granted additional time to Anderson Excavating to file 2010 financial assurance documentation. The new deadline was established as June 1, 2010.

24. On June 1, 2010, Anderson Excavating submitted documentation in regard to financial assurance requirements but that documentation was deficient. Anderson Excavating failed to submit an affidavit showing that an audit had been performed. Anderson Excavating failed to correctly calculate the amount of the deposit to be made in the closure and postclosure care account. A notice of violation was issued by the DNR on June 10, 2010.

25. On September 23, 2010, the DNR issued a letter requiring Anderson Excavating to submit a plan by November 5, 2010 to achieve compliance with the maximum leachate head requirements in 114.26(11)"a"(1). Anderson Excavating submitted the required plan on October 26, 2010 and documented that it achieved compliance on November 11, 2010.

26. On December 10, 2010, Anderson Excavating submitted a timely application for renewal of the sanitary disposal project permit.

27. On March 31, 2011, a meeting was held between the DNR and Barker Lemar Engineering, on behalf of Anderson Excavation. At this meeting it was agreed that, if Anderson Excavating were to close the landfill then Anderson Excavating would not be required to maintain closure and postclosure accounts but instead would only maintain a surety bond to provide adequate financial assurance. Based upon the intent to close, the DNR agreed not to review the pending permit renewal application.

28. On May 12, 2011, the DNR notified Anderson Excavating that an enforcement action would be taken for noncompliance with financial assurance requirements unless an agreement could be reached in regard to the closure of the landfill. This notice was issued in response to an indication from Anderson Excavating that closure of the landfill would occur.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

29. On May 20, 2011, the DNR received an updated closure plan filed on behalf of Anderson Excavating. An update addressing additional design requirements was submitted on behalf of Anderson Excavating on June 29, 2011 and received by the DNR on August 1, 2011.

30. On November 22, 2011, Anderson Excavating, through its consultant, notified the DNR that it would submit a proposal to the DNR for Anderson Excavating to stay open, rather than close as previously indicated.

31. On October 31, 2012, the DNR received a semi-annual inspection report for the Anderson Excavating Landfill. The report disclosed an area of uncovered waste in the permitted landfill cell and additional waste materials which had been dumped outside of the cell.

32. Since March 31, 2011, the DNR has engaged in repeated communications with representatives of Anderson Excavating and these communications have not resulted in either compliance or closure of the Anderson Excavating Landfill.

33. On April 1, 2012, Anderson Excavating failed to submit an annual financial assurance report as required by law.

34. On December 6, 2012 the DNR notified Anderson Excavating that it is in current noncompliance due to the failure to have a certified landfill operator.

35. On January 10, 2013, the DNR received a notification from EMC Insurance Companies that the financial assurance bond for closure and postclosure care for the Anderson Excavating Landfill has been cancelled effective May 11, 2013. Because Anderson Excavating has improperly drained the closure and post closure accounts for this facility, the surety bond is the only remaining financial assurance instrument.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123. The Commission has adopted 567 IAC 114 to provide for the regulation of construction and demolition solid waste landfills.

2. Pursuant to Iowa Code section 455B.306(9), a person operating a sanitary disposal project shall provide a financial assurance instrument to the DNR. Pursuant to Iowa Code section 455B.306(9)"b", the operator of a sanitary disposal project shall maintain closure and postclosure accounts as specified therein. Available financial assurance mechanisms and specific requirements for closure and postclosure care accounts are set

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

forth at 567 IAC 114.31. Anderson Excavating has violated these requirements.

3. Sanitary Disposal Project Permit No. 78-SDP-04-89P establishes the specific operating requirements for the Anderson Excavating Landfill. The requirements for leachate control, handling, and disposal are set forth in Special Provision 6 of the permit. The permit does not authorize the recirculation of leachate and requires that the leachate system be operated according to the approved Leachate Control Plan. Anderson Excavating has violated this provision.

4. Pursuant to 567 IAC 114.28(2), waste deposited in a construction and demolition waste landfill shall be uniformly distributed and compacted upon being deposited and shall be covered with 1 foot of earth at least once every seven days. Anderson Excavating has violated this provision.

5. Pursuant to 567 IAC 114.29(1), a certified sanitary landfill operator shall be on duty during all hours of operation of a sanitary landfill. Anderson Excavating has violated this provision.

6. Pursuant to 567 IAC 114.31(6)“b”(6), when a notice of cancelation of bond is issued by a surety, the owner or operator of a landfill shall, within 60 days, provide to the DNR adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. Anderson Excavating must provide such proof by not later than March 11, 2013.

7. Pursuant to 567 IAC 114.31(3) & (4), an owner or operator of a construction and demolition landfill must submit proof of compliance with all financial assurance requirements annually by April 1<sup>st</sup> of each year. Anderson Excavating has violated this provision.

## **V. ORDER**

The DNR hereby orders Anderson Excavating to comply with the following schedule:

1. By March 11, 2013, Anderson Excavating shall provide to the DNR adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond in full compliance with the requirements of 567 IAC 114.31(6).

2. Anderson Excavating shall not accept any solid waste at the Anderson Excavating Landfill until such time as a certified sanitary landfill operator has been retained and is physically on-site during operation and notice has been provided to the DNR of the retention of the certified operator.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

3. By March 15, 2013, Anderson Excavating shall pay an administrative penalty in the amount of \$10,000 to the DNR.

4. By April 1, 2013, Anderson Excavating shall submit an updated annual financial assurance report which verifies that closure and postclosure accounts have been reestablished and are properly funded as required by law. The DNR shall presume that the amount to be deposited shall be \$858,193 unless the updated financial assurance reports have been prepared and filed and verify that a lesser amount is justified pursuant to 567 IAC 114.31(8).

5. If Anderson Excavating fails to comply with any of the deadlines set forth above, then Anderson Excavating shall not accept any solid waste at the landfill until such time as satisfactory proof of compliance has been submitted to the DNR and the DNR has authorized in writing the resumption of waste acceptance. This prohibition includes the delivery of materials to the site for storage or recycling.

**VI. PENALTY**

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to the provisions of chapter 10, the DNR has determined that a penalty of \$10,000 is appropriate and is assessed by this Order. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Anderson Excavating has achieved multiple economic benefits from the violations described in this Order. The illegal recirculation of leachate documented in 2010 avoided hauling and disposal costs. The DNR has determined that between January of 2009 and May of 2010, Anderson Excavation avoided leachate disposal costs in the amount of \$1,590. Anderson Excavating achieved an economic benefit by avoiding the salary and training expenses related to retaining a certified operator. By draining the financial assurance accounts and not making required annual payments, Anderson Excavating achieved an economic benefit in excess of \$200,000. The economic benefits of the failure to comply with financial assurance requirements will be mitigated by compliance with this Order. For these reasons, and in order to resolve this matter administratively, a penalty of \$2,500 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. In this case the maximum penalty is \$5,000 per day is authorized. The leachate violations documented in this case increase the risk of groundwater

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

contamination. The violations document in this case in regard to financial assurance increase the risk that the site will not be properly closed and maintained, thereby creating a long-term risk of groundwater contamination. Additional violations related to proper cover and employing a fully trained and certified operator increase the gravity calculation in this case. Based on the above considerations and the multiple days of violation, \$3,000 is assessed for this factor.

c. Culpability. All of the violations documented in this case are willful and intentional illegal conduct. Anderson Excavating took affirmative action to recirculate the leachate. Anderson Excavating repeatedly chose not to file required financial assurance documents, despite notifications. Anderson Excavating has chosen to drain the required closure and postclosure accounts and to allow the surety bond to lapse. Anderson Excavating acknowledged that the former certified operator was retiring before that retirement took place but failed to obtain certification for another employee or hire a certified operator. The history of conduct by Anderson Excavating and its principal officer is one of willful and blatant disregard for the statutes and rules related to the operation of a sanitary disposal project. The penalty to be assessed for culpability must necessarily be limited to \$4,500 due to the \$10,000 administrative limit but a higher penalty can be justified.

## **VII. APPEAL RIGHTS**

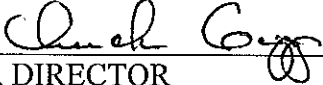
Pursuant to Iowa Code section 455B.308 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, a written Notice of Appeal may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.



**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Anderson Excavating Company, Inc.**

**VIII. NONCOMPLIANCE**

Compliance with sections V.1-V.4 of the Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.307.

  
\_\_\_\_\_  
CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 30<sup>th</sup> day of  
January, 2013

Field Office #41; Jon Tack; Chad Stobbe; VI.B(2)(c); VI.B(2)(d); VI.B(2)(e)